





For M. Del Valle

Guatemala.

11 Nov. 1826

EXTRACT

FROM PROPOSED

CONSTITUTIONAL CODE.

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E X T R A C T

FROM THE PROPOSED

CONSTITUTIONAL CODE,

ENTITLED

OFFICIAL APTITUDE MAXIMIZED,
EXPENSE MINIMIZED.



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BENCHER OF LINCOLN'S INN.

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INTRODUCTORY VIEW,

&c.

THE following tract, as the title of it imports, has for its subjects the appropriate aptitude of public functionaries, and the expenditure employed at the charge of the people in engaging persons to subject themselves to the obligation of rendering the correspondent services. It is composed of four sections, detached from the ninth of the thirty chapters, or thereabouts, of a proposed Constitutional Code, the entire of which, wanting little of completion, will be published as soon as circumstances permit. A table, composed of the titles of the chapters and sections of it, is hereunto annexed.

The class, composed of the members of the official establishment taken in its several branches, was the only class in contemplation when the plan here delineated was taken in hand. In the progress of the work, the idea occurred that, supposing the plan well adapted to its purpose in the case of the class thus distinguished, it might be so, in no small degree, in the case of any other persons whose situation in life would, without

any particular view to office, admit of the expenditure of the quantity of time and mental labour, which, with that view, is here proposed to be employed. But, what further may require to be said in relation to this secondary, and as it were collateral, subject, will be rendered more intelligible, by being postponed till after everything which belongs to the primary, and sole relevant, subject, has been brought to view.

Such being the *subjects*, now as to the *objects*, or say *ends in view*. These are, as the title of these pages intimates, maximization of the degree of appropriate aptitude in all its branches on the part of the functionary in question, and minimization of the expense employed in the creation and purchase of that same aptitude.

In this same title, a proposition fully expressed is—that, in the plan to which it gives denomination both these objects are endeavoured to be accomplished: a proposition not so fully, if at all expressed, but which will be seen maintained, is, that the accomplishment of the financial object, far from being, as seems but too generally supposed, at variance with that of the intellectual and moral, is, on the contrary, in no small degree, capable of being made conducive to it. A notion but too extensively entertained is—that, whatsoever, quantity of public money is employed in engaging individuals to step into official situations, relative aptitude in proportionate degree will follow as a matter of course: and that, for example, if, in the case of a chief judge, for 5,000*l.* a year salary, you get a certain quantity of appropriate aptitude, double the salary, and, without anything further, you double the aptitude. Such, at any rate is the opinion which, in England, whether inwardly en-

tertained or not, is outwardly and generally acted upon.

With this opinion, that which gives direction to the here proposed arrangements, so far from harmonising approaches, more nearly to the reverse : in so much that, supposing a number of competitors, so far as instruction will go, endowed with equal degree of aptitude,—a man, who, if any such there be in the situation in question, is willing to take upon himself, without emolument in any shape, the performance of the duties of an office, is likely to perform them better, than another man who would not undertake it for less than 5,000*l.* a year: or even better than he himself would have done, if, on stipulating for that same sum, he had obtained it. In the course of the section entitled *Remuneration*, being the first of the four sections of which this tract is composed, this opinion, together with the grounds on which it rests, may be seen developed.

First comes the *appropriate aptitude*: and the problem is how to *maximize* it.

When, for the performance of a certain work, an *individual* finds himself in need of a helper, before he fixes upon any one, he naturally puts questions to any one that offers,—questions having for their object the obtaining satisfaction, as to the relative aptitude of the candidate: if, instead of *one* only, a number more than one presented themselves, he would, as far as time permitted, put those same questions to them all: and, in the putting of these questions, he would address himself to them separately, or all at the same time, as he found most convenient. In either way, by so doing, he would *examine* them; he, the *examiner*; they, the *examinees*. In private would the examination be of course performed in this case; for, on

this occasion, of no person other than the individual himself, would the interest or convenience be in view: by publicity, if obtainable, he would, and in proportion to the number of persons present, be embarrassed, and in no way benefited.

To the *functionary in chief*, who, for aiding him in the business of his department, feels the need of helpers in the businesses of the several sub-departments, their aptitude cannot in the nature of the case be a matter of indifference. His property will not, it is true, as in the case of the individual, be at stake upon the aptitude of his choice. His *property*, no; but his reputation, yes. If the subordinate chosen be to a certain degree unapt, the reputation of the superordinate will suffer in two distinguishable ways: by the badness of the work done under his orders, and by the weakness, or something worse, evidenced by the badness of the choice.

Under these circumstances, what can he do? For making, in his own person, any such examination as that which the individual, as above, has it in his choice to make, power is altogether wanting to him, for time is altogether wanting. To some person or persons other than himself, he must therefore have recourse for the formation of his opinion, and the determination of his choice. Who, then, shall they be? If, in each instance, the reporter, who in this case will be the recommender, be this or that individual,—what is *not* certain is,—that the giver of the advice will have had any better grounds for the choice than the asker: what *is* certain is, that he will not have had so great an interest in the goodness of the choice. For the goodness of *his* choice, the individual employed is not responsible to anybody but himself: the functionary is responsible to every-

body. In so far as he is proof against the temptation to serve his own particular interests and affections at the public expense, his wish will, therefore, be, to see located, in each situation, the individual in whose instance the maximum of appropriate aptitude has place. Unable as he is of himself to perform the examination, the persons to whom it will be his desire to assign the task will, in consequence, be those, in whom the maximum of appropriate aptitude with relation to this same task, is to be found. By this most general description the next most general description is settled: they will be the persons that are most distinguished in the character of *instructors* in the several branches of art and science in which it is requisite the persons to be located should be proficients.

In regard to the *number* of the persons present, the examination must, in this case, be either private or public. Which shall it be? Private, it might or might not be as satisfactory as if public, to *himself*; to the public, it would not be. But, supposing him wise, it would not be so satisfactory, even to himself. For, the more complete the cognizance taken of the proceedings of these examiners by the public, the stronger the inducement they would have, each of them, for rendering his proceedings as well adapted to the purpose as it was in his power to render them. Thus, then, we have the maximum of publicity as a necessary condition to the maximum of appropriate aptitude: of appropriate aptitude—in the first place on the part of the examiners, in the next place, on the part of the examinees, in their quality of persons locable in the several situations, say in one word, *locables*. Evidenced by the answers will be the

aptitude of the *examinees*: by the questions, that of the *examiners*.

Such, then, should be the *examination judicatory*. As to the *examinees*, by the opinion expressed by the votes of the members of this same judicatory, they will at any rate be placed in the list of persons more or less qualified for being located in the several official situations: as to their respective degrees of aptitude, in the judgment of the judicatory taken in the aggregate, they can be expressed by the several individual members. As to the manner in which the deduction may be made, it will be seen in § 2, of which *Locable who*, is the title.

Next subject, the *expense*: problem, how to minimize it. First expense, that of the instruction: next expense, that of remuneration for the services to be rendered by those by whom the instruction has been received.

For the instruction there must be the necessary apparatus of instruction: lands, buildings, furniture for every branch: appropriate implements according to the nature of each branch.

For administering the instruction there must, moreover, be instructors, and, for the instructors, subsistence, and remuneration in quantity sufficient to engage their services. As to the pockets from whence the expense is drawn, so far as regards subsistence—bare subsistence, together with the apparatus—they must, in the first place, be those of the public, for in this way alone can the sufficiency of it be secured. This being thus settled, such part of the remuneration as is over and above bare subsistence,—from what source shall it be drawn? Answer: from the pockets of those by whom alone the most immediate benefit

from the instruction is reaped: those, to wit, by whom it is received. From *them* it cannot come, without being accompanied with willingness, and followed by retribution; and the quantity of it will of itself increase in exact proportion to the number of those benefited by it: in which case it will, in the same proportion, *be a bounty upon industry* on the part of the instructors. Drawn from persons other than those by whom the immediate benefit is reaped, it would neither be accompanied with willingness, nor followed by retribution. And, if it were, as it naturally would be, a fixed sum—a sum not depending for its quantity on the exertions of the instructor to whom it is given—it would be a *bounty upon idleness*.

Next comes the expence of the remuneration to the intended functionaries; remuneration for the time and labour requisite to be expended on their part; before location, in qualifying themselves for rendering their several official services; after location, in the actual rendering of those same services.

For this purpose, the nature of the case presents three distinguishable modes: 1. In compliance with appropriate calls, offer to take a less salary than that which has been proposed; 2. Offer to pay a price for it; 3. Offer to submit to its being reduced to a certain less amount, and then to pay such or such a price for it, after it has been so reduced. The two first modes are simple; the third, a compound of the two: all these will have to be considered.

A point all along assumed is—that, in each office there is but one functionary: in a word, that no such implement as a *board* has place anywhere. Assumed, and why? Answer: for these reasons: All advantages that can have been

looked for from a *board* are better secured by other means: in particular, by maximization of publicity and responsibility; and because the exclusion of this instrument of intrigue and delay is not less essential to aptitude than to economy. Moreover, these reasons may, as will be seen, be applied with still greater profit, to the judiciary, than to the executive, branch of government.

After all, neither by the intellectual competition, nor by the pecuniary competition, nor by both together, can the individuals, by whom the situation shall be filled, be finally determined. For the formation of this determination, there will still be need of some one person, or set of persons, in quality of *locator* or *locators*. By reasons, the essence of which is contained in the word *responsibility*, the choice has, in this case likewise, been determined in favour of number *one*.

This one person can be no other than the functionary in chief, under whose direction the functions belonging to all the several situations in question are to be exercised. As to his choice, it cannot but be influenced, not to say directed, by information which the examinations have put the public in possession of, as to the merit of the respective candidates; but, it will not, because it cannot, be determined by any positive rule. By all that has been done, or can be done, towards divesting the power—the *patronage*, (for that is the name of it,) of the quality of *arbitrariness*,—it will not therefore be by any means divested of value, or sunk beneath the acceptance of a person competent to the task of exercising it.

In the annexed table of chapters and sections, will be seen a list of the several ministerial situations to be filled. *Prime minister* will be the natural appellation, of him by whom those are thus

filled, and by whom the exercise of the functions respectively belonging to them is directed. In § 3, intituled *Located law*, will be seen how this consummation is proposed to be effected.

But, once more as to the *instructors*. After whatsoever may have been done for engaging them, remains still the question—*where* can they be obtained? Three sources of obtainment, and no more, does the nature of case afford: they must be *found* at home; they must be *made* at home, or they must be *imported* from abroad. In each of these three modes, *invitation* is necessary. *Formation* is, in this case, an operation pre-eminently tedious: and the *formators*, where shall they be found? To find or make them would be to remove a smaller, by a greater difficulty. Different, according to the circumstances of the community in question, will, in this particular, manifestly be the eligible course.

Now as to the collateral subject, *national* education, and the assistance which the arrangements proposed for the instruction of official functionaries would give to it. What is manifest here is, that whatever is good, as applied to functionaries, will not be otherwise than good, as applied to non-functionaries: whatever promotes useful instruction in any shape in the one case, will promote it in that same shape, in no less degree, in the other. The only difference is—that, in the case of *national* education, that is to say, in the case of a youth educated at the charge of his parents,—for occupations other than the exercise of a public function,—there will be no service for the public to buy, no salary for the public to sell: and, the taking the benefit of the instruction provided will, on the part of each individual, be—not matter of necessity, as in the case of an official situation, but

matter of choice. It was of course with a view to office alone, that the idea occurred, of bringing to view the several branches of instruction, that appeared requisite to give to public men the best qualification possible for the several classes of offices. But, as far as it goes, this same exhibition will be of use, with a view to no small variety of private occupations. When proposing for his child this or that occupation, the parent will find in this table, if not a sufficient body of information, a memento, at least, reminding him of the need of his satisfying himself as to what are the branches of instruction to which the mind of his child shall be directed, and of his looking out accordingly for an appropriate set of instructors.

As to instructors,—of whatsoever degree of aptitude will have been given to persons of this class, for the purpose of the instruction to be given by them to functionaries, the benefit will be open to non-functionaries: they who are able and willing to instruct the one, will not be less so to instruct the other.

So much as to *aptitude*. And as to *expence*,—of the expenditure necessary to the instruction of functionaries, a part, more or less considerable, will have been employed in the obtainment of means of instruction, which, without detriment to the one, may be employed in the instruction of the other. Of all such means the non-functionary class may have the benefit, without paying for it, any further than in their quality of members of the whole community, they had necessarily been made to pay, along with all others, for the instruction of the functionary class.

To a plan of this sort, various objections will of course present themselves. These, as far as they

could be anticipated, are here collected, and such answers as seemed sufficient, subjoined.

For conveying a general conception of them, the few words following may, in this page perhaps, suffice.

I. Objection to the publicity of the examination.—*Timid aptitude excluded.*

II. Objection to the probationary period proposed for the instruction.—*Time, thence aptitude, insufficient.*

III. Objections to the pecuniary competition:—

1. Pecuniary responsibility diminished—thence corruption and depredation probabilized.

2. *Venality established.*

3. *Unopulent classes excluded, and thus injured.*

In the perusal of the here proposed arrangements, one thing should all along be borne in mind. The *sort* of government supposed by them is a representative democracy: the *time* in question that of the infancy, not to say the birth, of the state in that same form: such being the state of things, in which, in the largest proportion, the information endeavoured to be conveyed, could have any chance of being listened to.

But, in the several subordinate situations, even supposing the highest to be filled by a monarch, not inconsiderable is the number of those of the proposed arrangements, which, in the eyes even of the monarch himself, might be not altogether unsuitable. For, setting aside any such heroic endowment, as that of sympathy for the people under his rule,—to a monarch, however absolute, neither can appropriate aptitude on the part of his official servants, nor frugality in respect of the pay allotted to them, be naturally unacceptable. The more completely security, in all its shapes, is given to the subject many, the greater is the quantity

of wealth they will acquire ; and, the greater the quantity they acquire, the greater is the quantity that can be extracted by him from them, for his own use : in particular, for the maintenance of his *standing army*—that high-pressure, high-priced and most supremely prized, engine, which is at once an instrument of supposed security for the timid, of depredation for the rapacious, of oppression for the proud, of boasting for the vain, and a toy for the frivolous and the idle : and, as to frugality, the less is expended in the comfort of any part of the subject many, the more is left for the fancies of the ruling one.

Setting aside the case of a pure aristocracy,—a form of government no where exemplified to any considerable extent,—one only form there is, in which maximization of official aptitude, and minimization of expense, are of course objects of congenial horror to the rulers. This is that, the composition of which is a mixture of monarchy and aristocracy, with a slight infusion of democracy in the shape of a sham-representative body, in the formation of which the subject many have a minute share. In this state of things, expense of official emolument is maximized, and why ? That the possessors may be pampered by the receipt of it, the people intimidated by the force kept up by it, corrupted by the hope of it, and deluded by the glitter of it. Aptitude is, at the same time, minimized, and why ? Because, if the contents of the cornucopia were distributed exclusively among the most apt, those junior partners of the all-ruling one, with their dependents and favourites, would have little or no share in it.

Four distinguishable sorts of matter may be seen pervading the whole texture of this extract : the *enactive*, the *expositive*, the *ratiocinative*, and

the *instructional*. Of these, the enactive, the expositive, and ratiocinative, have already been exemplified in the three-volume work, intitled, "Traités de Legislation Civile et Penale," being the first of the four works published in French, from the author's papers, by M. Dumont. Had the political state, to the circumstances of which the codes in question were to be adapted, been, as mathematicians say, a *given quantity*,—the *instructional* might not perhaps have been brought into existence: at any rate, it would not have occupied anything near the quantity of space, which it will be seen to occupy here. But, the indeterminate ness of these circumstances immobilized, on many occasions, the giving to the matter the form of a positive enactment, capable of standing part of the text of the law, as in the case of a code emanating from authority. Necessitated was therefore the expedient, of employing, instead of determinate expressions, general descriptions,—for the purpose, of conveying such idea as could be conveyed of the matter of the provision, which the nature of the case presented itself as demanding. By the *instructional* matter is accordingly meant the sort of matter, the purpose of which is the giving instructions to the legislator, if the tide of events should ever carry into that situation a man, or body of men, to whom it seemed good, to give to such part of the matter as could not here be expressed *in terminis*, a character conformable in principle, to those parts, for which an expression thus completely determinate, has already been proposed.

Such being the distinctive characters of the parts in question, by some minds, it was thought, it might be found a commodious help to conception,

if, as often as they presented themselves, applicable indication were given of them throughout, by prefixing to each portion of matter its appropriate denomination as above. To any person, to whom these additaments appear useless, they need not offer any annoyance,—for he has but to pass them by, and read on, as if no such words were there.

Of a code, to which the stamp of authority had been affixed, these distinctions would afford a commodious method of exhibiting so many authoritative abridgments : abridgments of the only sort, on which any safe reliance can be placed. By the enactive part, if published alone, the most condensed of all the abridgments would be presented ; by appropriate types and figures of reference, intimation of the existence of the omitted matter might be conveyed, without any sensible addition to the bulk of it. In another edition, might be added the expositive matter ; in a third, the expositive and the ratiocinative in conjunction.

In England, a highly laudable disposition has of late shown itself, and from a quarter from which it might be followed by effect :—a disposition to raise the language of the legislator to a level, in respect of propriety, somewhat nearer than that which it occupies at present, in comparison with the worst governed among other civilized nations, whichever that may be. A design so extensively useful, would indeed stand but an indifferent chance of being carried into effect, if the fraternity of lawyers, professional as well as official, could not find adequate inducement for giving it their permit. But neither is such toleration altogether hopeless. What that particular interest requires, is—that the rule of action shall continue in such a

state, that, without their assistance, comprehension of it, to a degree sufficient for the regulation of conduct, should, to all other members of the community, continue impossible. But, such is the excess to which the bulkiness and disorderliness of it have been carried ;—such, in consequence, even to themselves, the difficulty of stowing it and keeping it stowed in the mind, in a state capable of being applied to use as wanted ;—that, for their own relief under that difficulty, the risk of rendering the oracle too extensively and effectually comprehensible, may perhaps appear not too great to be hazarded.

This being supposed,—a result, that seems not altogether out of the sphere of possibility, is—that even those to whom the *matter* of all such codes as those here exemplified is—it need not be mentioned by what causes—rendered the object of insurmountable abhorrence,—the *form*, as far as regards *arrangement and expression*, may, in a degree more or less considerable, be regarded as a subject for adoption. To any person by whom it may have happened to be viewed in this light, the intimation conveyed by the words *enactive, expositive, and ratiocinative*, may perhaps appear not altogether devoid of use. In the case of the series of codes to which the present extract belongs,—in proportion as the *matter* presented itself, the *form* in which it might be presented, it was thought, to most advantage, came along with it. Thus it was, that, as they were committed to paper, explanations, belonging to the head of *form*, became so many materials for a short disquisition, which may perhaps be submitted to the public in a separate state. But, even from the small specimen here exhibited, it may be perhaps in some sort conceived, how great would be the contribution to condensation, as well as precision,

if the expedient were employed, of substituting to the continued repetition of a portentous pile of particulars, that of a single general expression, in which they were all contained : the import of that expression having, once for all, been fixed,—fixed, by an appropriate exposition, in the ordinary mode of a definition *per genus et differentium*,—or, where that is inapplicable, in such other mode as the nature of the case admitted of.

Between the several sorts of matter, distinguished from each other as above,—the actual separation, it cannot but be observed, has not, with any approach to uniformity, been, on this occasion, made. In one and the same article, two, or even more, of these species, will not unfrequently be found exemplified. In an authoritative code, this want of symmetry might, supposing it worth while, be remedied. In the present unauthoritative work, the difficulty of separating the proposed *enactive*, and the *instructional* from each other, was found so great, that the necessary labour and time (which would have been neither more nor less than that of writing the whole anew), was felt to be too great, to be paid for by any possible use. In like manner, in other instances, the *ratiocinative* will be seen blended with the *enactive*. In an authoritative code, the labour might, perhaps, in this case, though this does not appear altogether clear, be paid for by the use : for example, for the purpose of an authoritative *abridgment*, such as the one above proposed. But, in the present unauthoritative sketch, a mixture of the *ratiocinative* presented itself as desirable, not to say necessary, were it only to the purpose of humectating the dryness of the *enactive* matter, and diminishing the aversion, which a set of arrangements, so repugnant to commonly-prevailing notions and affections, would have to en-

counter, if inducements to acquiescence were not in some shape or other mixed up with it.

In a *civil*, or say a *right-conferring* code (for *civil* expresses so many different things that it expresses nothing), and in a *penal*, or say a *wrong-repressing* code, especially if made for a *given* political state, the separation would be a work less difficult than it has been found in the present one: accordingly, in the *Traité de Legislation*, it may, in both instances, be seen effected.

In that part of the present proposed code, which regards the *judiciary establishment* the heads of which may be seen in the annexed table, the separation will be found much less imperfect.

Another particular, which will naturally call forth observation, is the practice of adding to the numerical denomination of a section when referred to the *title* by which it is characterised. In authoritative codes an additament of this sort is not however without example. In the present unauthoritative sketch it has been matter of necessity. By the author, nothing he writes, in the character of a proposed code or law, can ever be regarded as perfected, so long as he lives: in the proposed code in question, alteration after alteration have, in great numbers, at different times, been actually made: further alteration after further alteration will continually be contemplated: and wherever, in regard to an entire *article*, either insertion or elimination have place, all the articles which follow it in the same section will require a fresh numerical denomination, and the anterior reference, if preserved, will be found delusive: and so in the case of *sections* or *chapters*.

Into what is new in point of form, a further insight will, it is hoped, ere long, be given, by another and larger preliminary extract from the

present Constitutional Code : to wit, the *judiciary* part above alluded to. The *enactive* matter, combined with what seemed the indispensable portion of the other sorts of matter, is already in a state fit for the press, as likewise a considerable portion of the *ratiocinative* and *instructional*, in a detached state. From the annexed table of the titles of chapters and sections for the whole, an anticipation more or less extensive may be formed of the instruments, which have been contrived for the purpose of *compression*, and may be regarded as a sort of *condensing engines*: a principal one may be seen composed of the general word *function*, followed by the several specific adjuncts attached to it. In several of its parts the matter of this same *judiciary* code could not be determined upon, without correspondent determinateness being given to correspondent portions of the *procedure* code : a code for this purpose is in such a state of forwardness, that all the principal and characteristic points are settled, and nothing remains to be done, but the reducing to appropriate form some portion of the matter which has been devised.

In this work will be included, as far as circumstances admit, an all-comprehensive *formulary*, exhibiting forms for the several written instruments of procedure ; in particular the instruments of *demand* and *defence*, for suits of all sorts ; as also forms for the *mandates* required to be issued by the judge, on the several occasions, for the several purposes : and for each mandate an appropriate *denomination* has of necessity been devised. On this occasion, as on every other, the endeavour has all along been to render the instrument of designation as characteristic as possible of the object designated. *Summonition mandate*

will accordingly be seen taking place of *sub-pœna*; *Prehension and abduction* mandate of *capias* and *habeas corpus*: and, in lieu of *abduction*,—as the purpose requires, will be subjoined *abduction, transduction, sistition, sequestration, vendition*, and so forth; an appellation, such as *prehension*, and *vendition mandate*, for example, may, it is hoped, be found by lay-gents to constitute no disadvantageous substitute to *fieri facias* or *fi fa*:—to *lay-gents*, that is to say, to all human beings, but those whose interest it is that every thing by which human conduct is undertaken to be regulated, should be kept to everlasting in as incomprehensible a state as possible.

Demand paper will, in like manner, for all occasions taken together, be seen substituted, to the aggregate, composed of *action, mandamus, bill, indictment, information, libel*, and so forth: *defence paper*, to *plea, answer, demurrer*, and so forth: for, if artificial injustice has its language, so has natural justice. But time and space join in calling upon conclusion to take place of digression.

With the regret that may be imagined, does the reflection occur—that, as far as regards the diction, there are but too many political states, in which the above-mentioned views, supposing them approved of, could not be carried into any such full effect, as in those in which the language in use is the English: for, with the exception of German, there exists not, it is believed, any where that language, which will lend itself, anything near so effectually as the English, to the formation of such new appellatives as will be necessary to precision and condensation: in particular the French, which, notwithstanding its scantiness, unenrichableness, and intractability—still seems destined to continue—say who can how much longer—the common language of the civilized world.

For a particular purpose, the present extract has been sent to press, before the proposed code to which it belongs, and in which it is designed to be inserted, could be completed. Hence it is that, but for this information,—the numerical figures, in the titles to the several sections, might be taken for so many *errata*, or have the effect of giving to the whole publication the appearance of a fractional part of a work that has been lost.

This same circumstance will serve to account for the *headings* of the pages.

It may not here be amiss to observe, that of the bulk of the work in its complete state, no judgment can be formed, from the space occupied by the three first of these four sections. The *enactive* part of the first four chapters together, for example, does not occupy so large a space as does the least of these same three sections.

Amid so much innovation, a short caution may be not altogether unseasonable. In the frugality here recommended, ~~no~~ *retroaction* is comprised. By the taking away of anything valuable, either in possession, or even, though it be but in expectancy, so it be in fixed expectancy, whether on the score of remuneration; how excessive soever, or on any other score,—pain of *frustrated expectation*—pain of disappointment is produced. In the import of the above words *fixed expectancy*, is contained whatever is rational and consistent with the *greatest happiness principle*, in the pertinacity, manifested by the use of the English parliamentary phrase, *vested rights*: and note—that by forbearing to apply the alleviation which, by the defalcation in question might be given, in respect of the public burthens, to persons of all classes taken together, no such pain of disappointment is produced.

As little ought it to pass unheeded, that, sup-

posing a high-paid functionary divested of a certain portion of wealth thus misapplied, he is not, by a great many, the only sufferer: with him will be sufferers all persons of all classes, in proportion as their respective means of expenditure were derived from his. Supposing, indeed, the over-pay derived from *crime*—obtained, for example, by false pretences, by this supposition the case is altered. But, add the supposition, that all by whom the punishment should be ordained, or that all by whom a part should be taken in the infliction of it, are sharers in the guilt, then comes the question—By whom shall be cast the first stone? An Englishman need not look far to see this supposition realised. Prudence might in this case join with sympathy, in the constructing a bridge of gold, for carrying to the land of safety all opponents. Only at the expense of those, who would otherwise have been, but never will have expected to be, receivers,—can *retrenchment*, on any other ground than that of *punishment*, be, except in case of public insolvency, without hesitation, justified.

On the occasion of the ensuing proposed arrangements, mention of divers periods of years has of necessity been made. It might have been some help to conception, if, on the occasion of this or that train of suppositions, a determinate day could have been fixed, for the commencement of each period. This, however, could not be done. For different countries, different days would have been requisite. For this country,—England to wit,—the day may be fixed by imagination with something like precision. The day for the commencement of this Code with the stamp of authority on the first page of it, is the day which will give commencement to the hundred and first year, reckoning from the day on which the author

will have breathed his last. In the mean time, to those who have the faculty of extracting amusement from dry matter, it may serve as a second Utopia, adapted to the circumstances of the age. Of the original romance, it may, however, be seen to be—not so much a continuation as the converse. In the Utopia of the sixteenth century, effects present themselves without any appropriate causes; in this of the nineteenth century, appropriate causes are presented waiting for their effects.

C

END OF THE INTRODUCTORY VIEW.



6. 292.

6

§ 15. REMUNERATION.

Ratiocinative and Instructional.

ART. 1. *Aptitude maximized; expense minimized.*
Indicated in these few words are the leading principles of this Constitution on the subject of remuneration.

Ratiocinative and Instructional.

ART. 2. As to maximization of official aptitude in this department, for the course taken in this view, see also the next section, § 16. *Locable who.*

Ratiocinative.

ART. 3. Subservient even to the maximization of aptitude is minimization of expense. For,

1. Whatever be the occupation belonging to the office, the greater a man's relish for it is, the greater his aptitude for it is likely to be.

2. The less the remuneration, in consideration of which he is willing to exercise these same occupations, the greater is his relish for them.

3. Greater still, if, instead of receiving, he is willing to pay for the faculty of exercising them.

Ratiocinative.

ART. 4. So, on the other hand, the greater the expense employed in remuneration, the greater will be the opulence of the functionary so remu-

nerated. But the greater his opulence, the less his appropriate aptitude will naturally be. For,

1. The less will be his activity.

2. The greater his facility for engaging in merely pleasurable and other rival occupations.

3. The greater his facility for obtaining accomplices in transgression, and supporters to shield him against dislocation, punishment, and disrepute.

4. The more apt to form an exaggerated estimate of the quantity of the expense for which, at the charge of the public, there may be, on each several occasion, a demand.

5. Altogether fallacious is the notion, by which, to the purpose of repression of wrong, responsibility is regarded as increased by opulence. By man's nature, every the poorest individual is rendered susceptible of more suffering, than, in any case, is ever thought fit to be inflicted for the purpose of repression by means of punishment: altogether fallacious this notion, and, under a corrupt form of government, invented for no other purpose than that of affording a pretence for needless, wasteful, and corruptive remuneration; remuneration, and to a vast extent, in cases where the absence of all service is notorious and undeniable.

Ratiocinative.

ART. 5. Minimization of expense is therefore an object here pursued, not only as being itself an end, but as being a means of attainment, with relation to that other end. One and the same, accordingly, as per § 16, is the road that leads to the attainment of both these ends.

Ratiocinative.

ART. 6. So far as regards remuneration, mini-

mization of expense, in relation to all, can no otherwise be effected, than by minimization in relation to each. In relation to each, in each official situation, note this rule: Having by appropriate courses, as per § 16. *Locable who*, maximized the number of persons possessed of the maximum of appropriate aptitude, ascertain from each the minimum of remuneration for which he will be content to charge himself with the official obligations. Modes of ascertainment are every where in use. Competition is no less applicable to the price of labour than to the price of goods; to one sort of labour than to another; to labour in the service of the public than to labour in the service of an individual. So much for minimization of expense, separately considered. As to the arrangements of detail, for the union of minimization of expense with maximization of aptitude, see the next sections, 16. *Locable who*, § 17. *Located, how.*

Ratiocinative.

ART. 7. Exercised, by a public functionary, at the expense of the public, *liberality* is but another name for waste. Combined in its essence are breach of trust, peculation, depredation, oppression, and corruption. Exercised, to a good end, and at a man's own expense, liberality is a virtue: exercised, at the expense of others, and without their consent, it is a vice: laudation bestowed upon it, hypocrisy and imposture: its fruits, the above evils: the good, if any, on the smallest scale; the evil, upon the largest.

Ratiocinative and Instructional.

ART. 8. Repugnant accordingly to these principles is remuneration, in any shape, on any

occasion, *arbitrarily* conferred: repugnant, even if for service really rendered, or about to be rendered; much more if on false pretence of service.

Ratiocinative and Instructional.

ART. 9. Arbitrarily conferred, consistently with these principles, can neither good nor evil be by the hand of Government: neither reward nor (as per Penal Code) punishment; nor (as per Ch. xxv. JUSTICE MINISTER, § 4. *Dispositive Function*) exemption from punishment.

Expositive.

ART. 10. *Arbitrarily* conferred is the matter of reward, so far as by the hand of Government it is otherwise than *judicially* conferred. Judicially conferred will accordingly be seen to be all official situations, in relation to which location is performed, as per § 17. *Located, how.*

Ratiocinative and Instructional.

ART. 11. On no other account than that of service to the public, can the matter of reward be conferred by the hand of Government, except in so far as it is bestowed in waste.

Expositive.

ART. 12. *Ordinary* and *extraordinary*: under one or other of these denominations comes all service rendered, or supposed to be rendered, to the public.

Expositive.

ART. 13. In the case of a public functionary, by ordinary service understand all such service as, by acceptance of his office, he stands bound to render.

Expositive.

ART. 14. By extraordinary service, all such service as, by such acceptance, he does not stand bound to render.

Expositive.

ART. 15. *Pecuniary* and *honorary*: by one or other of these denominations may the matter of reward be designated, in every shape in which it is usually bestowed by the hand of Government.

Ratiocinative and Instructional.

ART. 16. For extraordinary service rendered to the public, reward in a *pecuniary* shape may, with as much facility and propriety, be demanded at the hands of a Judicatory at the charge of the public, as in the like shape it is so demanded at the charge of an individual.

Ratiocinative and Instructional.

ART. 17. With not less facility and propriety, so may it in an *honorary* shape.

Enactive and Instructional.

ART. 18. Honorary reward in no shape does this constitution allow to be conferred, but in the shape of *natural honour augmented*: augmented by the hand of Government; and in this case the hand of Government is, as per Art. 20, the hand of justice.

Expositive.

ART. 19. By *natural honour*, understand that which, in consideration of service, in this or that extraordinary shape, rendered to the community, or to this or that section of the community, the members of it, in their quality of members of the *Public Opinion Tribunal*, spontaneously render to

the *benemeritant*: render, that is to say, by means of appropriate sentiments of love and respect, entertained in relation to him, with the occasional addition, of the special good will, good offices, and services, in whatever shape, tangible or untangible, naturally flowing from these sentiments.

Enactive and Expositive.

ART. 20. *Judicially augmented will natural honour* be by two conjunct and correspondent appropriate judicial decrees; the first *opinative*, the other *imperative*, in this as in other cases: as to which, see Art. 22, and Ch. xii. JUDICIARY COLLECTIVELY, § 9. *Judges' Elementary Functions.*

Enactive.

ART. 21. Efficient causes of the augmentation in this case, are, authoritative *recordation* and authoritative *publication*.

Enactive.

ART. 22. Authoritative recordation is by entry made in an appropriate Register Book: say, in the *Extraordinary Service Register*, or say, *Public Merit Register*.

Enactive.

ART. 23. Of such entry, the matter is composed of an abstract of the record of the proceedings in a suit, in conclusion of which the judicial decrees, as per Art. 20, have been pronounced: 1. the *opinative*, stating the act deemed meritorious, the *shape* in which the service has been rendered to the public, and the fact that the individual, by or for whom the demand of the reward is made, is *he* by whom the service has been rendered, with the *evidence* on which the

decree has been grounded ; — time, place, and manner mentioned : 2. the *imperative*, ordering entry to be made of this same abstract in the above-mentioned Merit Register.

Enactive.

ART. 24. The commencement of the suit is by application, made to the Judicatory, demanding for the alleged *benemeritant* a place in the *Public Merit Register*, on the ground of the extraordinary service thereupon stated ; as in the case of an ordinary application for money, alleged to be due from defendant to applicant on the ground of work performed.

Enactive.

ART. 25. The *applicant*, that is to say *demandant*, may be either the alleged *benemeritant*, or any person for him, with or without his consent, and with or without his knowledge.

Enactive.

ART. 26. The *defendant* will be the functionary, who would be defendant, were the subject of the demand-money alleged to be due from Government for goods furnished, or work done, otherwise than in the way of official service ; namely, the *Government Advocate* of the immediate Judicatory, as per Ch. xviii. **IMMEDIATE GOVERNMENT ADVOCATE** ; or the *Government Advocate-General*, as per Ch. xix. **GOVERNMENT ADVOCATE-GENERAL**, if so he thinks fit.

Enactive.

ART. 27. The *Judicatory* will be the immediate Judicatory of the sub-district in which the metropolis of the state is situated ; unless, for special reasons, assigned by the Legislature, or the Prime

Minister, the immediate Judicatory of some other sub-district shall have been appointed.

Enactive and Instructional.

ART. 28. *Authoritative publication* is by publication, given, in such way as the Legislature shall have appointed, to the matter of the recondation-entry, made, as per Art. 23, in the *Public Merit Register*.

Enactive and Instructional.

ART. 29. Repugnant, accordingly, to the principles of this Constitution, is all *purely factitious honour* or *dignity*, in whatever shape, conferred, as hitherto it has every where been, *arbitrarily*; that is to say, otherwise than *judicially*, as above.

Expositive.

ART. 30. *Titles of honour*, or *ensigns of dignity*. To one or other of these denominations may be referred the instruments, by which factitious honour or dignity has usually been conferred. Combined, to a considerable extent, they have been with one another, and in many instances with masses of power, or wealth, in various shapes, or both.

Expositive.

ART. 31. Examples of *titles of honour* are—

1. Prince.
2. Arch-Duke.
3. Grand Duke.
4. Duke.
5. Marquis.
6. Count or Earl.
7. Viscount.
8. Baron.
9. Baronet.

10. Knight — to wit, of any one of a variety of *orders*.

11. Knight — of no order.

Expositive.

ART. 32. Examples of ensigns of dignity, worn about the body of the individual, are—

1. Stars.
2. Crosses.
3. Ribbons.
4. Garters.
5. Gold and silver sticks.

Expositive.

ART. 33. Examples of *ensigns of dignity*, exhibited on utensils of various sorts, employed by the individuals, are as follow :—

1. Coronets, of various shapes, corresponding to the several titles of honour.
2. Armorial bearings.

In this latter case, the assertion conveyed, though in most instances contrary to truth, is—that some ancestor of the individual had employed himself in an enterprise of unprovoked slaughter and devastation. For a symbol, if requisite, a *gibbet*, substituted or added, would have been more suitable.

Ratiocinative and Instructional.

ART. 34. To the purpose of remuneration, whether for ordinary or extraordinary service,—unsuitable, in comparison of *natural honour augmented*, as above, would merely *factitious honour* be, as above, even if *judicially conferred*. For, with the utmost conceivable accuracy, in each individual instance, does the quantum of natural

honour adjust itself to the quantum and merit, in every shape, of the service: the lots of reward, attached to the aggregate number of services rendered within a given time, thus rising, one above another, in gradations which may be as numerous as the individual services themselves. Thus it is, that, in this mode of remuneration, not a particle of injustice can ever have place, except that which, as in all other cases, is liable to be produced by *deceitfulness* on the part of the evidence, or want of aptitude on the part of the Judge; and, by the supposition, this danger is the same in both cases.

On the other hand, where it is of *factitious honour* that the reward is composed, no such accuracy of adjustment can have place. Between grade and grade, how numerous soever the grades, there must always be a space more or less considerable; each such space is consequently a field of possible injustice, the magnitude of which is as the amplitude of such space. But, proportioned to the magnitude of each such space, is the discouragement, applied to the most meritorious of two or more services, to which the same lot of *factitious reward* is applicable. For if, for the rendering of each of them, sacrifice in any shape is necessary, in such sort that greater sacrifice is necessary in the case of the most than in the case of the least valuable of the two, the identity of the reward in both cases operates as a premium on the least valuable — as a prohibition on the most valuable. Moreover, in the case of the *factitious honour*, the justice of the decree is exposed to a degree of disbelief, and the Judge to a degree of disrepute, for which, in the case of the *natural honour*, there is no place. In the case of the *factitious honour*, it is by the Judge that the exact place in the scale of honour is determined, since

it is by him that it is conferred, in the shape of some *title of honour*, or some *ensign of dignity*, which has a specific name. In the case of *natural honour*, it is not by the Judge, but by the *Public Opinion Tribunal*, that, in each individual instance, the *benemeritant's* place in the scale of honour is determined. The Judge may be corrupt, or (what, so far as regards the individual case, amounts to the same thing) may be suspected of being so; the *Public Opinion Tribunal* cannot.

Enactive, Ratiocinative, and Instructional.

ART. 35. Sufficient of itself for the destruction of this Constitution might an instrument of corruption of this sort be, if arbitrarily conferrable. To the Prime Minister alone could the power of conferring it be allotted; for to no other functionary could any one propose to allot it. In the hands of a man of ordinary ambition and superior ability, sufficient then might this one instrument be, for the conversion of the here-proposed commonwealth into an arbitrary monarchy: at the least, into a monarchy operating by an all-pervading and all-vitiating system of corruption, waste, and unpunishable depredation, as in England. Into his lap, in return for these *objects of general desire*,—for themselves, or, what would amount to the same thing, for their connexions,—would continually be poured power in various shapes, impunity for various transgressions, and money from various sources, by the Legislature, that is, by the acting majority of the members. Immovable he would remain, how flagrant soever were his inaptitude.

Enactive and Expositive.

ART. 36. Exceptions excepted, repugnant to these same principles is all *ultra-concomitant remu-*

neration. By *ultra-concomitant* remuneration, understand all habitual remuneration for habitual service, after the cessation of the habit of service.

For exceptions, apparent rather than real, see Ch. xi. **MINISTERS COLLECTIVELY**, § 3. *Army Minister*; Ch. xi. **MINISTERS COLLECTIVELY**, § 4. *Navy Minister*.

Ratiocinative.

ART. 37. Completely needless, and thence unjustifiable, is all such ultra-remuneration. A baker is not paid for supplying food when he has ceased to do so; a medical practitioner for attending patients; a law practitioner for assisting litigants. Yet never is there any want of bakers, of medical, or of law practitioners: as little, in any official situation, would there be any want of occupants, —if, in the case of service rendered to the whole community, as in the case of service rendered to individuals, the habit of receiving the remuneration were to expire with that of rendering the service. But, bakers have it not in their power thus to load customers; medical practitioners, patients; law practitioners, litigants: while, in a Government which has for its end in view the good of the few, and, for the subject-matter of its sacrifice, the good of the many, placemen have it in their power thus to load subjects. In the Anglo-American United States, waste in this shape has no place.

Expositive and Ratiocinative.

ART. 38. Of modes of *ultra-concomitant remuneration*, examples are as follow:—

1. Superannuation pensions, granted on presumption of relative inaptitude, through infirmity caused by age.

2. Pensions of retreat, granted on the score of casual inaptitude, through infirmity.

3. Pensions of retreat, granted without so much as the pretence of infirmity, on the score of a certain length of past service, balanced all along and requited already by concomitant remuneration.

Remuneration thus located is a premium on inaptitude. Men flock into the situation in contemplation of inaptitude : the infirmity, if it occurs, is exaggerated : if worth while, fostered or even produced : for the plea of it, naturally ready assistants may be looked for in all third persons, who are, or regard themselves as exposed to be, sufferers by it ; most strenuous of all, the patron to whom the right of location accrues.

Enactive and Instructional.

ART. 39. Repugnant to these same principles is all *artificially mislocated* remuneration, so located, at the expense of the community, by the hand of Government. It is universally needless; it is essentially unfrugal.

Expositive.

ART. 40. By *artificially mislocated*, understand conferred on an individual, other than him, by whom the service was rendered.

Expositive.

ART. 41. *Mislocated*: it is either *mislocated in toto* or *extravasated*.*

Expositive.

ART. 42. It is *mislocated in toto*, where, to a per-

* By anatomists, blood which has flowed out of its proper vessels is said to be *extravasated* : if into other vessels, the *error loci* is spoken of as having place ; as in the case of a blood-shot eye.

son by whom the service in question was not, in any part, rendered, reward is given ; to him by whom it was rendered, none.

Expositive.

ART. 43. It is *extravasated*, in so far as, to reward given to the person by whom the service was rendered, is added, on that same account, reward given to some person, by whom, on the occasion in question, no service was rendered.

Ratiocinative and Expositive.

ART. 44. On the contrary, purely beneficial, and by the whole amount of it, is all remuneration in so far as *naturally extravasated*. *Naturally extravasated* it is, in so far as, without expense to Government, in virtue of pre-established connexions, the benefit of it diffuses itself among any, who, by any tie of interest, self-regarding or sympathetic, are in any way connected with the remuneratee. In this case, having place without expense to the community, it is so much pure good, and the more there is of it the better.

Ratiocinative and Instructional.

ART. 45. Of reward *mislocated in toto*, an example has place as often as, for service rendered by a subordinate, the superordinate not having contributed any thing to the performance of it, the superordinate reaps the reward, the subordinate no part of it.

In monarchies, injustice in this shape naturally and habitually pervades the whole of the official establishment : the more abundantly, the more absolute the monarchy is, and thence the more perfectly the light of the public eye is excluded from all official operations.

From this code, by the exclusion of all *arbitrarily conferred* reward, as per Arts. 8, 9, injustice in this shape will be seen effectually excluded. Every man will be judged of according to his works.

Expositive and Ratiocinative.

ART. 46. Of reward *artificially extravasated*, at the expense of the community, by the hand of Government, examples are the following:—

1. Pensions, receivable by the widow of the functionary, on his decease.

2. Pensions, receivable by a child or children of the functionary, on his decease.

3. Pensions, payable to any more distant relative of the functionary, on his decease.

These may be styled *post-obituary*, or *post-obit* pensions.

4. An income in perpetuity, derived from land or otherwise, with power given to the supposed benemoritant and his representatives to hold in hereditary succession, as if so purchased by him. In this case, for the benefit of one individual, generations, indefinite in number, are subjected to depredation.

Enactive, Ratiocinative, and Instructional.

ART. 47. Pre-eminently repugnant would be any such compound, as that which is composed of *factitious* dignity, with fractional masses of supreme power, legislative and judicial together; the whole rendered extravasate, running in the blood of the first remuneratee, from generation to generation, through a boundless line of descendants, from no one of whom could any part have been borne in the supposed public service so remunerated: those

same generations being, moreover, loaded with the obligation of keeping repaired all breaches, made by dissipation, in the originally excessive mass of wealth, originally combined with that same inordinately rich compound ;* the whole for the perpetual saturation of appetites essentially unsatisfiable.

Expositive, Ratiocinative, and Instructional.

ART. 48. For examples, see Art. 30 : those appellations, which elsewhere designate little more than the *gaseous* dignity, designating, in one nation—many of them—the above-mentioned substantial compound : for, in the race of waste and corruption, it was ordained of old, that the foremost of all other Governments should be distanced by that, of which it is the distinguishing character to be (in the words of its own so indefatigably trumpeted proclamations), “the envy and admiration of all surrounding nations”

Enactive.

ART. 49. In respect of any extraordinary public service, analogous to the ordinary service attached to any official situation in this department,—any person whatever, by whom any such extraordinary service has been rendered, may be considered as belonging, on that occasion, to that same office, and, in proportion to the value of the service, be remunerated.

Enactive and Expositive.

ART. 50. Service, which, to a functionary in

* For two successive demonstrations of this truth, see the Author's Defence of Economy against Burke, in Pamphleteer, No. XVII. anno 1817; and Defence of Economy against Rose, in Pamphleteer, No. XX. anno 1817.

the situation in question, would be *ordinary*, and sufficiently requited by the remuneration attached to it, may, if rendered by a person not in that situation, be *extraordinary*, and as such be remunerated.

Expositive.

ART. 51. Examples are as follow :—

1. Service, by defence of any portion of the territory, or of a Government or private vessel, or any individual inhabitant of the territory, against aggression by any pirate or foreign enemy. Sub-department, the Army or Navy.

2. Service, rendered, at the peril of life, by the apprehension of a depredator or other common malefactor, while engaged in the commission of a crime. Sub-department, the Preventive Service.

3. Service, rendered, at the peril of life, by the extinction of an accidental conflagration. Sub-department again, the correspondent section of the Preventive Service Sub-department.

Enactive.

ART. 52. But, in a case of this sort, the Judge will be upon his guard against a fraud, to which, by its nature, it stands exposed : that is to say, service left unperformed by an appropriate functionary, that a confederate non-functionary may perform it, and thus, by the fraudulent display of pretendedly meritorious service, receive appropriate remuneration.

Enactive.

ART. 53. *Judicially*, in a pecuniary shape, may reward, to any amount, be thus conferred.

Enactive.

ART. 54. A minister's pay is [——] a year,

paid quarterly [in advance]. From unwilling hands, receipt of ulterior emolument is *extortion*: from willing ones, corruption. This pay is the standard of reference in the case of the pecuniary competition, as per § 17. *Located how*, Art. 1.

Enactive.

ART. 55. In every Sub-department, the pay of the minister is the same.

Enactive.

ART. 56. Whatsoever is the number of sub-departments allotted to one and the same minister, pay is not given for more than one.

Enactive.

ART. 57. To his stated pay is added indemnification money, for the expense of inspection visits, at the rate of [—] per mile, actually travelled; with [—] for each day or part of a day so employed, for diet and lodging while out. By the care of the Finance Minister, after each visit, immediately on his return, the money is paid to every other minister, on his signing a receipt.

§ 16. *LOCABLE WHO.*

Enactive.

ART. 1. This section has for its object the providing, as soon as may be, and in so far as is necessary,—but no further, at the public expense, in relation to the business of all the several Sub-departments comprised in the Administration Department, a system of arrangements, whereby, in the several official situations, appropriate aptitude in all its branches shall be maximized, and at the same time expense minimized; say, a sys-

TEM OF OFFICIAL LOCATION, or, for shortness,
THE LOCATION SYSTEM.

Instructional.

ART. 2. As to what regards instruction, in so far as this system is well adapted to the instruction of persons destined to become public functionaries, so will it be, according to the nature of the business belonging to the several sub-departments, to the instruction of persons at large, foreigners as well as natives. Any benefit thus derivable from the system, call it the COLLATERAL BENEFIT.

Enactive, Ratiocinative, Instructional.

ART. 3. Of this system of location the leading features are as follows :—

A choice will, at any rate, be to be made, out of a number of candidates or persons proposed. According to this Constitution, for reasons elsewhere given, by a single person, and not by a number, the location must on every occasion be made. That person can be no other than the person, on whom, in case of a bad choice, as demonstrated by relative inaptitude, the responsibility, legal or moral, or both, will fall; in a word, the *Prime Minister*. By no legal restriction is he, therefore, prevented from choosing any person at pleasure: but, by a moral restriction, by the circumscribing eye of the Public Opinion Tribunal, his choice (as per § 15. *Located how*) will naturally be confined within limits comparatively narrow. The person whose degree of appropriate aptitude, in all its several branches, as certified by the votes of a set of appropriately determined Judges, stands highest, will have been made known—made known to him and every body. Thus it is that provision is made for *maximization of aptitude*.

Remains now the *minimization of expense*. Of

those persons who, in the scale of aptitude, stand on or near the same level, it is made known by public competition who those are who, in the situation in question, are willing to serve the public on the lowest terms. Provision for moral aptitude is at the same time made, by a scrutiny, performed at the same time, in the course of the same examination, and with equal publicity.

If, to a person who, in the eyes of the universal public, is seen to stand foremost in the line of appropriate aptitude, and in that of cheapness of service, taken together,—he prefers a person not distinguished in either way, it is at his peril — at the peril of his reputation — that he does so. Nor can an improper choice afford any promise of producing to him any permanent advantage ; for, in the case of every office, the power of *dislocation* is confided to a number of hands, each acting separately, with full power, and who, not adding to it (any one of them) the power of *location*, stand (every one of them) altogether divested of all inducement to abuse a power so thankless and unprofitable to the possessors.

For calling into exercise this dislocative power, there will be the motive afforded by the affection of envy in the breasts of disappointed rivals : — a check not capable of being brought into operation in the ordinary case of a purely arbitrary power of patronage.

The choice being thus narrowed, not only expense, but with it, power of corruption, is minimized : the benefit thus bestowed is the produce — not of favour, but of right; though not of legally binding, yet of morally binding right.

Enactive and Ratiocinative.

ART. 4. Under this system, two periods there are, in relation to which, separate provision requires

to be made; the *preparation period*, and the *consummation period*. The consummation period, though last in the order of time, requires to be first described; the other not being otherwise capable of being made intelligible.

Expositive.

ART. 5. By the *consummation period*, understand *that*, during which the courses of proceeding regarded as necessary to the production of appropriate aptitude in the several official situations, in the degree of perfection regarded as desirable and attainable, will be carrying on, each of them during the whole length of time regarded as desirable. Of this period, the *commencement* will coincide with the termination of the preparation period: determinate *end* it will have none.

Expositive.

ART. 6. By the *preparation period*, understand *that* during which those same courses will have been going on, but will not have continued long enough, it is supposed, to have produced, with sufficient certainty, the whole of the desired benefit.

Instructional and Ratiocinative.

ART. 7. If in any degree beneficial, these same courses will, however, almost from the first, have been productive of some degree of appropriate aptitude, which benefit will have continued on the increase, up to the point of time at which the preparation period terminates, and the consummation period commences. This increase, at every distinguishable stage of it, the Legislature will turn to profit, as per Arts. 54, and those which follow it.

Instructional.

ART. 8. For these several courses, the several times of commencement will be appointed by the Legislature.

Instructional and Ratiocinative.

ART. 9. On these principles, throughout the official establishment, proceed the several arrangements, in virtue of which, so soon, and so long, as any person is to be found by whom appropriate proof has been given of his having reaped any distinguishable portion of the benefit in question, no person by whom like proof has not been given will be locable: and, by the whole amount of the thus acquired aptitude, how small soever, this system of location will be preferable to any in which no security at all is given for appropriate official aptitude. Thus it is, that not by doubt, nor even by despair, as to the practicability of carrying the system to the height of perfection here exhibited to view, can any tenable reason be given, for omitting to carry it so far as it shall be found capable of being carried into effect.

Instructional.

ART. 10. For this, as well as other purposes, the Legislature will have caused to be made, and published, an all-comprehensive list of the several situations, belonging to this, as well as the several other departments: name of it, *The Office Calendar*; as to which, see also § 31. *Securities for Appropriate Aptitude.*

Instructional and Expositive.

ART. 11. General heads, under which, for the present purpose, these may be ranged, are—

- I. Situations of talent.
- II. Situations of simple trust.
- III. Situations of trust and talent.

Expositive and Instructional.

ART. 12. By situations of talent, understand those so circumstanced, that, for the apt fulfilment of the duties attached to them, appropriate *knowledge, judgment, and active talent*, in some special shape or shapes, as per Art. 15, over and above appropriate *moral* aptitude, are regarded as necessary.

These situations will be formed into groupes, corresponding to the several groupes of branches of art and science, proficiency in which shall have been regarded as necessary to the apt exercise of the several functions respectively belonging to the several situations.

Expositive.

ART. 13. By situations of simple trust, understand such, for the apt performance of the duties whereof no such proficiency is necessary.

Examples are—

1. Situations, the duties of which are discharged by the receipt, custody, and transmission, of money.

2. Or of messengers from a central part of the territory of the state to every other: as in the case of Post-office situations.

3. Or of stores of any kind: except in so far as, according to the nature of the article, chemical knowledge respecting the causes and preventives of depreciation may be necessary.

4. So, situations, in virtue of which the *custoditive* function is exercised with relation to an immovable subject-matter: excepting as above.

Expositive.

ART. 14. By situations of talent and trust, understand such situations of talent, for the apt performance of the duties whereof the disposal of the services of men in considerable numbers, or of things, for public use, to considerable value, is necessary.

Instructional and Expositive.

ART. 15. Of groupes of talents, proficiency in which may be regarded as necessary to the apt exercise of the functions belonging to correspondent groupes of situations, examples are as follow :—

I. Talent-requiring Situations.

1. Army Minister, and his various subordinates, in the several situations of Commander of Engineers, of Artillery-men, and Cavalry; Commissary, for the purchase, preservation, and conveyance of military stores and provisions; Medical Curator; Military Judge.

2. Navy Minister, and his various subordinates.

3. Interior Communication Minister, and his subordinates in various situations belonging to this sub-department.

II. Talents therein more especially requisite.

1. Mechanic and Chemical Art and Science, various branches. Mathematics, in so far as subservient thereto. Fortification. Military Tactics. Medical Art and Science, in most of its branches. Judicature, as applied to Army Service.

2. Mechanic, Chemical, and Medical Art and Science, various branches, as in the case of Army Service. Astronomy, in so far as applied to the determining the place of a navigable vessel, whether at anchor or in her course. Mathematics, in so far as subservient thereto. Naval Architecture. Naval Tactics. Judicature, as applied to Navy Service.

3. Mechanical and Chemical Art and Science, various branches; more particularly Hydrostatics and Hydrodynamics. Mathematics, in so far as subservient thereto.

4. Indigence Relief Minister.
5. Domain Minister.
6. Health Minister, and his various subordinates.
7. Foreign Relation Minister, and his subordinates, in the several situations of Envoy for General Purposes, and Consuls for the special purpose of protection of trade.
8. Finance Minister, and his various subordinates.
4. Political Economy.
5. According to the nature of the several Domains, Agriculture, Geology, Mineralogy, and the several branches of Mechanical and Chemical Art and Science subservient thereto.
6. Medical Art and Science, all its branches. Chemical Art and Science, all its branches. Mechanical Art and Science, various branches. Natural History, most of its branches. Geography, in so far as regards climate and temperature, in countries which the members of the community may have occasion to visit, either for war or trade.
7. Branches of Art and Science, corresponding to the faculties of reading, speaking, and writing, in various languages. Political Economy, in respect of the affairs of trade. History and Geography. National Statistics. International Law.
- 8.—1. Political Economy, as above.
2. Branches of Art and Science to which belong the several processes of the several manufactures and other branches of profit-seeking industry, the operations of which are liable to become subject-matters of taxation, restriction, prohibition, or compulsory obligation. History, Geography, National Statistics, and International Law, as above.

Enactive.

ART. 16. Except as per § 18. *Located how,*

Arts. 16, 17, antecedently to his admission into any office belonging to this department, the name of the individual must have been entered upon a certain list, called *the Locable List*.

Enactive.

ART. 17. For determining, in regard to each individual, whether he be qualified to be admitted, and accordingly, whether he shall be admitted, into this list,—and if yes, in what rank, a Special Judicatory will be formed, under the name of the *Qualification Judicatory*, or say, *Examination Judicatory*.

Enactive.

ART. 18. Of this Judicatory the composition will be as follows:—

1. *Presiding Judge*, the Justice Minister or his depute.
2. *Other Judges*, the *Prime Minister* and the several *Ministers*, or their respective deputes.
3. *Quasi-jurymen*, the several *instructors*, as per Arts. 42 to 53, under whose instruction the several *locables* have acquired their proficiency in the several groupes of branches of art and science.

As to Quasi-jurymen and their functions, see, in the part belonging to the Judicial Department, Ch. xiv. QUASI-JURY.

Enactive.

ART. 19. Included in the supposition of the sitting of a Judicatory of this sort, are the suppositions following:—

1. Returns made to the *advertisement*, as per Art. 42.
2. To the several places in question, pecuniary supply, afforded by Government; or ascertainment of the needlessness of such supply.
3. Time elapsed, sufficient for the obtainment

of instruction, more or less extensive, in the several branches of art and science in question, or some of them; observation being at the same time made, that, how small soever, the instruction obtained in consequence of this plan will, by the whole amount of it, have been so much more than would have had place otherwise. More will always be better than less, but the least will always be better than none.

Enactive and Instructional.

ART. 20. Mode of procedure in these examinations:—in the main this will be the same as in an ordinary *Immediate Judicatory*.

Examples of points of *agreement* and coincidence are as follow:—

1. On the *pursuer's side*, *applicants* and *demandants* (the several scholars) demanding admission into the *locable list*, and to that end presenting themselves for examination.

2. Subject-matter of demand, the *judicial service*, which the *Judicatory* will have rendered to the applicant, if, being placed on the list, he is at the same time placed at the head of it, or in any such inferior place as shall have been thought fit.

3. *Defendants*, in like manner, these same several scholars, each contesting the demand made by every other of the highest station, and the several next stations, one below another, as above.

4. *Evidence* in favour of his own aptitude, spontaneously adduced by each scholar in the character of *demandant*,—any such marks of proficiency, as, according to the nature of the case, the regulation shall have allowed to be exhibited.

5. *Other evidence* in his favour, elicited by *interrogation*, addressed to him by any Judges, or Quasi-jurymen, or fellow-candidates, so disposed.

6. Other evidence, elicited by *counter-interro-*

gation, addressed to him in pursuance of the opposite disposition.

7. Also, whatever *evidence* operates, in a *direct* way, in favour of any one of his several *competitors*, as above.

8. *Publicity*, throughout maximized.

Expositive.

ART. 21. Examples of points of *diversity* on the part of this as compared with an ordinary *Judicatory*, are as follow :—

1. Substitute or assistant, none, gratuitous or professional, to any such candidate, either as defendant or defendant.

2. Co-demandants or co-defendants, none *compelled* or *compellable* to be.

3. Extraneous witnesses, none compelled or admitted, except in case of necessity, on an examination into moral aptitude, as per Art. 33.

4. Costs, that is to say, compensation to a party on the opposite side for expenses of demand or defence, none exigible.

Enactive.

ART. 22. Of the Qualification *Judicatory* the *opinative* decree will be thus formed :—*Modes of votation*, two: the *secret mode*; then, before the result of the secret mode has been disclosed or ascertained, the *open mode*.

Enactive.

ART. 23. Of the way in which votation in the *secret mode* may be conducted, an example is as follows :—

1. A roll of paper or parchment is provided : length, such as to contain the names of all the several candidates, one under another.

2. In this roll are so many *columns*, placed

abreast of one another, headed each by the names of such *groupes of branches of art and science* as, for this purpose, have been assorted into groupes, as per Art. 15.

3. Under each of these heads, in each column, follow the *names* of the several *candidates*, in the alphabetical order of their surnames.

4. To each voter have been delivered *tickets*, in card or paper, equal in number to that of the *candidates*, multiplied by the number of the above *groupes* of branches of art and science.

5. Underneath, or at the back of the name of each candidate, according to the space provided, the *voter pins a ticket*, exhibiting the number, expressive of the relative rank which it is his desire the candidate should occupy.

6. Say, for instance, voters (Judges and Quasi-jurymen together), 25; candidates, 200; groupes of branches of art and science, 4: thence, total number of tickets requisite for each voter, 800.

7. Breadth of each ticket, say about one-fourth of an inch; hence, length of each roll, exclusive of the heading, 50 inches—4 feet 2 inches. Divide the roll into two equal parts, placing them abreast; length of each will be 2 feet 1 inch.

8. The words and figures employed being, all of them, in print, and printed in the same press, the person of the voter cannot thus be made known, as by hand-writing it might be.

9. The two half-sheets of each sheet being folded one over the other, in the manner of a sheet of paper in folio, the *numbers* attached to the names, will *not* in any instance, be *visible*.

Enactive.

ART. 24. Mode of giving in the votes. On a day pre-announced, the Judges, in presence of

each other, *deliver in* to the Registrar, each of them, his *voting roll*, at the same time : as delivered in, these rolls are *shuffled*, in the manner of a pack of cards, that it may not be known by what person they have respectively been delivered in. They are then *deposited*, one upon another, in a box. The box is *sealed*, by an impression from each Judge's seal^(a).

Enactive, Expositive, and Instructional.

ART. 25. Mode of scrutiny. For performing the arithmetical operation, the course taken is as follows:—

1. For the assistance of the Registrar, *scrutineers*, two or more, are *elected by the Judges*.
2. In case of equality, the *President* has a casting vote.
3. At the commencement of the scrutiny, and not before, the seals are broken. Thus, by the shortness of the time, all *unduly partial disclosure*, indicating, by means of secret marks, which roll was delivered in by which Judge, is rendered *impracticable*.
4. In relation to each such group of subject-matters, the figures expressive of the ranks, assigned to the several candidates by the several voters, being summed up,—he, in regard to whom the sum is least, is thus seen to stand highest in the judgment of the whole Judicatory taken together^(b).

^a Note by an East India Proprietor. At the India House the forms of secrecy are established; but it is regarded as a signal of hostility to the Directors if, on the delivery, the vote is not made visible to him who presides. Secrecy is thus an imposture. Allowance of liberty of suffrage professed; tyranny and corruption practised.

^b Note by a highly distinguished Officer of Artillery, bred up in the Government Academy at Woolwich, near London.

5. Example. Candidates, as above, say 200: voters, 12: if, by all 12, Candidate A is meant to be ranked highest, 12 will be the number expressive of such his rank: if lowest, 2,400. To facilitate conception, in an appropriate column, in a line with number 12, may be inserted number 1: so also in regard to the several other candidates.

Enactive.

ART. 26. In the *open* mode, the votation will be performed in nearly the same manner; sole difference, the name of the voter will be in his *own* hand, written at the top of his voting-paper.

Enactive.

ART. 27.—It will be performed, after performance in the secret mode: and before the time,

Such is the practice at the Woolwich Academy. Of the proceedings of the examinations, a register is there kept, and monthly returns of the contents made. By these returns, the earliest commissions in the service are determined, and promotions are determined by seniority in service.

For the quieting of the anxieties liable to be produced on such occasions, respecting the correctness of the vote, the nature of the case does not shut the door against ulterior expedients. Suppose a voter hesitating as to the comparative aptitude of two or more candidates; in this case, to give the preference to any one above the other may seem to him an act of injustice.

Modes in which he may exempt himself from self-condemnation on this score:—

1. One is the determining by *lot* which shall be placed.

2. Another, which will naturally be correctly expressive of the desired equality, is, the adding together the numbers, that would be expressive of the ranks, given to the several supposed equally apt candidates, if they were placed one above another, and then dividing the sum by the number of those same candidates: the quotient resulting from this division is the number which, on this plan, he attaches to the name of each. Thus much as to these particular candidates. By this mode his opinion will be correctly expressed in relation to these several candidates; nor, in this way, would the rank of those above or those below them be affected.

when, by the breaking of the seals, the result thereof is begun to be disclosed.

Enactive.

ART. 28. In the same manner, as per Art. 23, will be expressed, in the *secret* mode, the aggregate of the opinions of the *Quasi-jurymen*.

Ratiocinative and Instructional.

ART. 29. In their instance, the *secret* mode alone will have place. On their votes, favour or disfavour of candidates and their friends will operate, it is presumed, with more force than on those of the Judges. In the case of the *Quasi-jurymen*, they being the several Instructors, the interest which they respectively have in the aptitude of the persons located in the several official situations, is not so immediate and clear as in the case of the *Judges*. Each *Quasi-juryman* being an *Instructor*, it is for the interest of his reputation that his pupils, qualified or not qualified, be in the greatest number possible, placed in the highest ranks possible (c).

Enactive.

ART. 30. Of the votation, in both modes, in a Table styled the *Ranking-table*, the results will be published at the same time.

(c) Note by a person of distinction, bred in the University of Glasgow. When prizes were given, votes, expressive of the degrees of proficiency, were delivered by the candidates themselves; each thus acting as Judge in relation to every other: justice was universally acknowledged to be the general, not to say the constant, result.

Addition by the Author. At Hazelwood School, near Birmingham, at which two Greek youths are educating by the Author of this Code, punishment is never administered, unless the accused has been found guilty by his fellow-scholars. Note, that in no shape is corporal punishment there practised.

In the present case, the multitude of the persons in question would with difficulty, if at all, admit of so extended a Judicatory.

Enactive.

ART. 30. The effect of priority being, as per § 17, not peremptory, in such sort as to exclude the faculty of choice on the part of the locating superordinate, the result of both modes will lie, and will be seen to lie, before him, for his guidance.

Enactive or Instructional.

ART. 31. When time has brought into existence a sufficient body of experience, the Legislature will choose between the three modes: to wit, the secret mode alone; the open mode alone; and the two compounded, as above. In regard to the whole number of official situations, or this or that portion thereof, it will, if it see reason, ordain that they shall all three be employed: to wit, one during the first; another during the second; and the third during the third, of three successive years.

Enactive.

ART. 32. Of the comparative aptitude of the several instructors, presumptive evidence, more or less probative, will thus be exhibited. The rank of each several candidate being thus ascertained,—on a line with each, in an appropriate column, will be inserted the name or names of the *instructor* or *instructors*, under whose instruction he had studied; together with the *time* or times at which, and the length or *lengths of time during which*, such his study had been continued.

Enactive and Instructional.

ART. 33. For appropriate *moral* aptitude, the Legislature will, if it sees reason, appoint a limited list of topics, in relation to which, to the exclusion of all other topics, the several *Judges* and *Quasi-*

jurymen shall or may interrogate the several competitors: and the several competitors, with the leave of the judges, one another.

Into any alleged irregularities of the sexual appetite, all scrutiny, as being irrelevant, and pregnant with useless and mischievous annoyance to third persons, will be interdicted.

Enactive.

ART. 34. Till such list has been framed and published, the liberty of interrogation will be unlimited. Power in this case to the majority of the judges, spontaneously, or at the instance of the candidate who is the subject of the interrogation, to inhibit answer, or declare the interrogatee at liberty to answer or not, as he thinks best. As to this, see Ch. xii. JUDICIARY COLLECTIVELY, § 26. *Locable who.*

For falsity committed in this Judicatory, the interrogatee is responsible, as if it were in any other. So the interrogator, for any falsity asserted on the occasion of, or implied in, his interrogation.

Enactive.

ART. 35. Of the result of this scrutiny into moral aptitude, entry will be made in an appropriate register book, styled the *Candidate's Character Book*.

Enactive and Ratiocinative.

ART. 36. Appropriate moral aptitude being, in this case, mostly negative, — and where no imputation attaches, as will mostly be the case, not susceptible of degrees, — appropriate aptitude in this shape will not be subject to votation. Of this scrutiny, as of the other, the result will lie in the view of each locator, and will assist him in the formation of his choice.

Enactive.

ART. 37. From the result of the votation process, as above, will be framed, printed, and published by the *Registrar*, under the direction of the President, the aggregate *opinative decree*, by which the ranks of the several *candidates*, say the several *probationary locables*, will be determined.

Enactive.

ART. 38. Consequent upon, and determined by, the *opinative decree*, will be the *imperative decree*, by which order will be given for their insertion in the *locable list*, and for the printing and publication of it.

Enactive.

ART. 39. To the name of no *probationary locable* will insertion be refused, on the ground of *intellectual* inaptitude, unless by an express decree of the majority of the officiating Judges. In case of imputed inaptitude, the degree thereof will be exhibited by the rank occupied by the individual's name in the list of *probationers*, as per Art. 25.

Enactive.

ART. 40. So neither, on the ground of *moral* inaptitude. But in the printed list, to the name of each probationer, to whose conduct, on the score of moral inaptitude, an objection has been made, a mark will be attached; and of what has passed, on the occasion of every such scrutiny, a *record*, under the care of the *Registrar*, will be made and *published*.

Enactive and Ratiocinative.

ART. 41. For obtainment of *instructors* in the

several branches as above,—for maximizing the aptitude of those employed, by maximizing the number of those competing for the employment,—and, moreover, for preascertainment of the expense to Government, *advertisement* will, by direction of the Prime Minister, be made of the several places at which it is proposed that the instruction shall be administered; together with questions, to which every person desirous of administering it may give answers. Name of this instrument—*The Prime Minister's Advertisement for Instructors*; or, for shortness, *The Advertisement for Instructors*.

Enactive.

ART. 42. Examples of these questions are the following:

1. At the time of answering, have you under your instruction, any and what pupils, and of what ages respectively, in any and what branch or branches of instruction contained in this advertisement; and during what length of time have you so had them respectively, mentioning in each instance the year, month, and day of commencement?

2. To any and which of them do you supply lodging and diet, or either and which, and on what terms?

3. As to what other branches, if any, of art and science, in the groups stated in the advertisement, as per Art. 15, or in any and what other groups, or separately, do you regard yourself able, being also willing, to administer instruction?

4. What remuneration do you require for each pupil, with variations, if any, according to age, or any and what other circumstance?

5. Shall you be able and willing, and when, for any and what number, to supply lodging and diet, or either and which, and on what terms?

Enactive.

ART. 43. Of an advertisement to this effect, the object will be, to ascertain, in the first place, in what branches of instruction, and in regard to each, for what number of pupils apt instruction, may be expected, at the charge of the *individuals* more immediately benefited, and thence, what part of the expense will be required to be borne or advanced by *Government*.

Enactive and Ratiocinative.

ART. 44. As to the Government's share of the expense, the primary distinction will be between that part which must be advanced in the shape of *capital*, and that part for which an annual or other periodically received allowance, in the manner of *interest on capital*, may suffice: periodical allowance being preferable as far as it will go: preferable, inasmuch as, if, ineffective or become needless, the expense may at any time be made to cease.

Enactive.

ART. 45. Of the *purposes* for which *capital* may be requisite, the principal, are *house-room*, *ground-room*, and appropriate *apparatus*: relation being, in this case, had to the several branches of art and science.

For house-room and ground-room, it will be the care of Government that no advance shall be made in the shape of *capital*, any further than room, suitable and adequate to the purpose, cannot be obtained for hire.

Enactive, Ratiocinative, and Instructional.

ART. 46. For the maximization, not only of fru-

gality and *extent of provision* as above, but, moreover, of appropriate *aptitude* on the part of the *Instructors*; — it will be the care of the Legislature, to minimize, in the instance of each Instructor, all such supply in a pecuniary and quasi-pecuniary shape as will be independent of the number of his pupils, and thereby of the strenuousness and constancy of his exertions.

Instructional and Ratioeinactive.

ART. 47. In this view, it will be the care of the Legislature, that whatsoever remuneration is needed for engaging apt *Instructors* shall, in as large a proportion as may be, be defrayed, not by Government, but by the pupils, and their relatives: considering that, in so far as salary is provided at a fixed rate, independent of the number of the pupils, motives for adequate exertion on the part of the alleged *Instructors* are altogether wanting; while the love of ease is an inducement, by the force of which, the absence of exertion will be secured: considering, moreover, that even if remuneration were made to rise in proportion to the number of the pupils, adequate motives for adequate exertion might still be wanting; the number being kept up for appearance sake, and the exertion no greater than what would be regarded as necessary to save the Instructor from disgrace; and that thus, in both cases, every allowance, thus made, operates as a premium on negligence, and as a prohibition on appropriate attention and exertion.

Instructional and Ratiocinative.

ART. 48. On the other hand, cases may have place, in which, on pain of leaving the service unprovided with the necessary instruction on

matters of indispensable necessity, it may be necessary to provide extra remuneration, in a quantity such as to free the instructor from any such dependance, as above, on the number of his pupils. But against this case provision, in a great degree effectual, will have been made:—made, by the inevitable constancy of attendance, and performance of the appropriate functions, at the seat of duty, on principles and by means, as per Ch. vi. *LEGISLATIVE*, § 20. *Attendance and Remuneration, how connected*; and § 23. *Self-sufficient Function*: so far as consists in the reading of lectures, performance being thus secured, although the motives for exertion may not be in quite so high a degree efficient as they might be rendered by emolument, rising in proportion to the number of the pupils, still may they be sufficiently effective, to make ample return for the expense: delivery of the instruction, in some state or other, being by the supposition inevitable, regard for his own character will prevent a man from exhibiting the instruction in any such state as should expose his character to disgrace; and, in situations such as those in question, this will, on the part of most men, suffice to call into action nearly all such appropriate aptitude as they are conscious of being in possession of.

Instructional and Ratiocinative.

ART. 49. Of cases in which, in addition to bare subsistence, remuneration, rising in regular proportion with, and thence dependent on, the number of the pupils, may, as above, fail of being sufficient, examples are as follows:—

1. On the one hand, the branch of instruction; on the other hand, the state of the country such—that an extra mass of emolument, to a certain

degree ample, may be necessary to attract instructors from *foreign countries*.

2. Or, in the country in question, from *rival pursuits*.

3. The branch of instruction such that, in the country in question, at the time in question, notwithstanding the multitude of those by whom it is, on account of the public, desirable that it should be possessed,—proficiency in it may not afford to pupils,—in number sufficient to make up such remuneration, as above, to the instructor,—inducement sufficient in their eyes to pay for the time, labour, and expense, necessary to acquirement.

Instructional.

ART. 50. In a case in which, under the persuasion of necessity, as above, any such extra rate of remuneration has at the outset been allotted,—it will be for the care of the Legislature so to order matters, that along with the necessity the overplus shall cease. Preserving, therefore, for the sake of good faith, to the first professor his agreed-for remuneration — such reduction will, accordingly, upon his decease, resignation, or dislocation, be made, as the consideration of the probable desirableness of the situation in the eyes of apt instructors,—consideration being moreover had of the habitual probable number of pupils,—appears to admit of.

Instructional and Ratiocinative.

ART. 51. If, in this or that place, it should be found necessary to employ *public money*, in providing *pay* for the engaging of apt Instructors, care will at the same time be taken, *not* to make it *larger* than the pay customarily regarded as neces-

sary for the subsistence of the lowest-paid class of labourers: for, if at the *place* in question, at the expense of parents and relatives, pupils can not be obtained, in number sufficient to afford an adequate inducement to an apt instructor, it will follow, that that same place is not so fit as some other that might be found. For the mode, in which, on the part of instructors, comparative aptitude will be exhibited by the examinations, see Art. 32.

Instructional and Ratiocinative.

ART. 52. In this same view, the propriety will be seen, of abstaining altogether from making any allowance for *lodging* or *diet* of pupils, considering, that in no part of the territory, in which any population has place, can there be any want of parents or other relatives, by whom persons, apt in respect of age to become pupils, are already maintained at their own expense: and that, in so far as allowance were made for any such purposes, such allowance would operate as a premium, or bounty, on the production of population in excess.

Instructional and Ratiocinative.

ART. 53. As to *clothing*, if any Government allowance is made, it will be in the view of preventing the comparatively opulent from being excluded from the benefit of the instruction, by disgust produced from the spectacle of deficiency or uncleanness, on the part of the comparatively indigent.

Enactive, Instructional, or Expositive.

ART. 54. When, in consequence of the advertisement, as per Art. 42, answers, at the end of a

sufficient interval of time, have been received, — the Legislature will, by a succeeding advertisement, fix a day, distant not less than [one year] from the day on which such last-mentioned advertisement is issued ; on which succeeding day, at the appointed place or places, the *first examination* or examinations will be to be made. These days may respectively be denominated, the *examination-appointing day* or days, and the *examination day* or days ; the advertisement, the *examination-appointing advertisement*.

Enactive or Instructional.

ART. 55. On the occasion of such examination-appointing advertisement, if not before, the Legislature will have determined, and will then declare its determination, as to whether the several branches of art and science, comprised in the several groups, shall be included all in one examination, or shall, in any and what manner, be distributed among divers examinations : those examinations to be performed by the same or divers *Qualification Judicatories*, at the same or divers times.

Enactive.

ART. 56. Length of the *consummation period*, say [seven] years. Day of commencement, either the day of the first examination, or some anterior day — say the *examination-appointing day*, as above. In each place if there be places more than one, the number of examinations in the course of that period will be, if annual, 7 ; if semi-annual, 14 ; if quarterly, 28. By the last examination will have been produced a complete set of functionaries, by whom the full benefit of the system will (it is presumed) have been reaped.

Instructional and Ratiocinative.

ART. 57. Coincident with the *earliest consumption period* that has place, will be the *preparation period*. So many years, half-years, or quarters, so many *stages*, into which it may be considered as divided. By whatever considerations the Legislature will have been determined to cause the course of instruction to be administered in its entire length, by the same will it have been determined to cause to be administered whatsoever smaller portion the interval of time will, at each stage, have admitted. For,

1. In relation to appropriate aptitude in official situations, any quantity of time, employed in appropriate instruction for the obtainment of it, will be better than none.

2. Of any given degree of such aptitude, any such *direct* evidence will be better than none.

3. On grounds unknown to all men, *no man's* bare opinion, in affirmance of another man's aptitude, can be so well grounded as that of *all men* will be, after *a* public examination, though there were no more than *one*; followed as it will be by collective judicial opinion, having such examination for its ground, and expressed by secret, and thence by free votation, as above.

Enactive.

ART. 58. Accordingly, when one year's instruction has been received, no person, those excepted who are already in office, will be placed on the *locable list*, unless he has been receiving the benefit of that same instruction throughout that one year: when two years, no person by whom it has not been received during those two years, those persons excepted who are then already in office, and those by whom the instruction had

been received during the second year : and so on during the whole of the period — the quantum of appropriate instruction receiving every year an increase, until what is regarded as a sufficiency has been secured to all functionaries, in all lines, and the door perpetually shut against all those whose inaptitude stands self-confessed, and thus conclusively proved, by their shrinking from the test.

Instructional.

ART. 59. In relation to appropriate *moral* aptitude, the Legislature will consider—whether the course of examination relative thereto shall commence at the same *time* with the examination relative to the other branches of appropriate aptitude, as above,—or not till at some and what later point of time; as also whether the acts of the examinee, which, on the examination, may be permitted to be brought to light, may commence at *any* point of time, or whether a time shall be assigned, to the end that no such act, anterior to that time, shall be endeavoured to be brought to light.

§ 17. LOCATED HOW.

Enactive and Expositive.

ART. 1. *Pecuniary Competition.* So soon as, by the records of the Qualification Judicatory, candidates, apt for official situations, and thence placed on the *locable list*, have been made known, — the Prime Minister will, by advertisement, give notice, of the day on or before which, but not after which, the offers of persons desirous of filling the several situations are to be delivered in at his office. These offers will be so many biddings in the *office competition process*. Name of this ad-

vertisement, *the pecuniary — competition — inviting, or official pecuniary — competition, advertisement.* The *pay* annexed to each office having been predetermined by an ordinance of the Legislature, each *bidding* will be either *reductional*, or *emptional*, or *compound*.

Expositive.

ART. 2. By a *reductional bidding* understand—an offer, to accept, along with the situation, a quantum of pay, less than the appointed quantum, by a sum therein named.

Expositive.

ART. 3. By an *emptional bidding* understand—an offer to give, for the situation, with the appointed quantum of pay, a sum therein named.

Expositive.

ART. 4. By a *compound bidding* understand—a bidding, in which the reductional and the emptional offers are combined.

Enactive.

ART. 5. On the occasion of this same pecuniary competition,—from no person other than those on whose claims a judgment has been passed in the Qualification Judicatory will any bidding be available. No person, by whom a trial in the Qualification Judicatory has not been undergone, is in any one of these situations locable.

Enactive or Instructional.

ART. 6. *Pecuniary Security.* In relation to the several *simple trust* and *talent and trust* situations, as per § 16. Arts. 10, 11, 12, 13, the Legislature will have determined—in what instances, and in what shapes, *pecuniary security*

shall be required at the hands of Locatees: and, at the biddings, made on the occasion of the pecuniary competition, each bidder, making reference to such determination, will add in detail the pecuniary security he is able and willing to give.

Expositive.

ART. 7. Of every Minister, the situation is one of *talent* as well as *trust*.

Enactive.

ART. 8. No person will be admitted, either as Principal or as Deputy, to the exercise of the functions belonging to any situation standing upon the list of official situations in this department, — or to any pay as Principal, until an appropriate *instrument of location*, signed by Locator and Locatee, has been lodged in the records of the office.

Enactive.

ART. 9. In this instrument, matter will be to be entered under the several heads following: to wit,

1. *Name*, at full length, of the person located.
2. *His age* (mentioning the year, month, and day of the month, when born, so far as known) on the day of the signature of the instrument.
3. *Time*, that is to say year, month, and day of the month, on which he was *admitted* into the *Locable List*.
4. *Rank*, assigned to him on that occasion, as evidenced by the *Ranking-table*, as per § 16. *Locable who*, Art. 30.
5. *Bidding*, if any, made by him for the situation, with the particulars, as above, per Arts. 1, 2, 3, 4, annexed.

6. *Biddings*, if any, respectively made by whatsoever other persons were, for that same situation, candidates. Of these biddings, designation will be made, either by transcript, or abridgment, or simple reference to a separate instrument, according as they are more or less numerous.

7. If preferred to any whose *ranks* were respectively superior to his, mention of them, with brief indication of the *grounds of preference*.

8. So, if there were any whose *biddings* were superior.

9. Service, in quality of Depute in that same situation, may be a sufficient ground :—the actual length of such service being specified, together with the year, month, and day of the month, on which it commenced.

Enactive.

ART. 10. Of each such *location instrument, exemplars* will be disposed of as follows :—

1. Delivered into, and kept in the office into which the Locatee is located, one.

2. Delivered into, and kept in the office of the Locator, one.

3. Delivered to the Locator for his own use, one.

4. Of the several functionaries, if any, who, in their several grades, are *superordinate* to the Locator, to each, one.

Instructional.

ART. 11. The Legislature will consider — whether, to the checks thus applied, any other and what checks on mislocation shall be added : as for example, a statement of the several con-

nexions of the several candidates in the way of relationship, whether by consanguinity or alliance, fixing in that case the degrees. As to this matter, see Ch. xii. JUDICIARY COLLECTIVELY, § 16. *Partiality obviated.*

Enactive.

ART. 12. When a situation subordinate to that of Minister is to be filled, the Minister will advertise for candidates, and receive biddings as per Arts. 1, 2, 3, 4, 5, 6; the faculty of bidding with effect being confined to *tried* persons, as per Art. 5.

Enactive and Instructional.

ART. 13. In the Location Instrument, the matter will be entered under heads, as per Art. 9, together with any such others as the Legislature shall from time to time have added.

Enactive and Expositive.

ART. 14. Exceptions excepted, as per § 16. *Locable who*, Art. 55, no person who has not undergone trial in the Qualification Judicatory (as per § 16) will (as above Arts. 5, 12.) be locable. But, in the case of a situation of *simple trust*, notwithstanding any inferiority in the scale of *talent*, the preference may, without reproach be given to a candidate, — in consideration of the comparative advantageousness of his *bidding*, and the sufficiency of the pecuniary security, *self-seated* and *extra-seated*, proffered by him.

By *self-seated*, understand property possessed by himself; by *extra-seated*, property possessed by any such other persons, as have consented to stand bound for the eventual supply of any loss to the public, judicially proved to have had misconduct on his part for its cause.

Instructional.

ART. 15. As to pecuniary and quasi-pecuniary security, the Legislature will determine—in regard to what, if any, situations, the property, required for this purpose shall be required to be in such sort bound, as to be rendered inalienable in the hands of the possessor.

Enactive.

ART. 16. Exceptions excepted, in no situation of trust, or talent and trust, will any person be locable, until his age (whatsoever have been the number of his examination years) is that, at which a man is entrusted by law with the entire management of his own concerns: say [21] years.

Enactive and Ratiocinative.

ART. 17. Exceptions for consideration are—

1. Army service; the military branch: in this branch, an officer is locable in the lowest grade at the age of [—] years.

For, in this grade, the functionary, though he has the command of some, is himself constantly under the command of others.

Enactive and Ratiocinative.

ART. 18.—2. Navy service; the military branch: in this branch, an officer is locable in the lowest grade at the age of [—] years: Reason, as per Art. 17.

Instructional.

Art. 19. On a comparative survey of the several Sub-departments, and the several situations in each sub-department, the Legislature will consider, in what instances demand for difference in grades

has place, and, in so far as it is established, how far succession to a vacancy shall be influenced by it : that is to say, in what instances, in regard to any grade above the lowest, biddings under the pecuniary competition system shall have place.

Instructional and Ratiocinative.

ART. 20. On this occasion, the considerations following will be borne in mind :—

1. Of two persons, the one, suppose, has been habitually subject to the direction of the other. In this case, if, by a fresh arrangement, it happens to the superordinate to find himself subjected to the direction of his quondam subordinate,—a natural consequence is—on the part of the thus relatively depressed superordinate, a pain of *humiliation*—say, in this case, *a pain of degradation*—a pain produced by the comparison made of his antecedently elevated, with his subsequently depressed state.

2. Where no such subjection has had place, no such pain is produced in a man's mind by the mere view of the rise of a person, who, not having been subject to his direction, comes to be located in a situation more eligible than his : in this case, therefore, that same reason, in favour of *settled succession*, has no place.

Enactive, Expositive, and Instructional.

ART. 21. As to every situation subordinate to that of Minister, there will be two locators — the *initiative* and the *confirmative*. Exceptions excepted, as to every office in his sub-department, the initiative locator is the Minister ; confirmative, the Prime Minister. Exceptions, if any, remain to be excepted by the Legislature.

Enactive, Expositive, and Ratiocinative.

ART. 22. If, in any sub-department, any *initiative locator*, subordinate to the Minister, is established,—it will be in consideration of distance, lest, during the interval between the day on which the vacancy at the place in question takes place, and the day on which information of the *confirmative location* reaches that same place, the service belonging to the situation, so vacated, be left unperformed. In this case there may be *two initiative locators*; *temporarily initiative locator*, the next superordinate of the functionary by whose dislocation the vacancy is created; definitively initiative locator, the Minister.

Expositive and Instructional.

ART. 23. Examples of sub-departments, in which, in respect of *distance*, a demand for *initiative location*, in hands other than those of the Minister, and thence for *temporarily initiative location*, is more particularly apt to have place, are the following: to wit—

1. The Army Minister.
2. The Navy Minister.
3. The Foreign Relation Minister.

Enactive and Ratiocinative.

ART. 24. In the Army sub-department, in so far as regards command over functionaries in the military branch, vacancies, in respect of *function*, are, in effect, for the occasion, without special appointment, filled of course; to wit, by the universally and necessarily established relation between rank and rank; as to which, see Ch. x. **DEFENSIVE FORCE.**

Instructional.

ART. 25. Not so, in so far as regards situations

in the non-military, styled the *commissariat branch*; those, to wit, by whom, with relation to the matter of warfare, and the matter of subsistence, are exercised the several functions, *procurative*, *custoditive*, *applicative*, *reparative*, and *eliminative*: as to which functions, see Ch. ix. MINISTERS COLLECTIVELY, § 3.

Instructional.

ART. 26. Nor in so far as regards the command of fortified places.

Instructional.

ART. 27. Nor in the Navy department, in which, in the establishments of the great maritime powers, in so far as regards the matter of subsistence, the above functions, as per Art. 23, are, in each ship, commonly exercised by a single functionary, styled the *Purser*.

Enactive.

ART. 28. In the Foreign Relation sub-department, at each missionary station, as on the incapacity or absence, so on the death, of the principal functionary,—his functions will be exercised by a depute of his, as per Ch. viii. PRIME MINISTER, § 4. *Self-suppletive Function.* Failing such depute, if an established subordinate of the principal is on the spot, under a denomination, for example, such as that of *Secretary of Legation*, such subordinate will, for the time, except in case of special provision to the contrary, succeed as if located by a temporarily initiative locator, as above, Art. 22.

Enactive.

ART. 29. On a vacancy in the situation of *Vice-Consul* by the *Consul* will the function of temporarily initiative locator be exercised.

Instructional.

ART. 30. In what stations, and on what footings, the power of deputation shall be exercised by a Vice-Consul, the Legislature, having regard to distance, and to the state of society in the foreign nation, in each case, will determine.

Enactive.

ART. 31. Of the locative function, the mode of exercise is as follows:—By the Minister, he being the initiative locator, an appropriate *location instrument* is prepared and conveyed to the office of the Prime Minister. After the lapse of [——] days exclusive, reckoned from the day of its being received in that office, the location will have become confirmed:/* unless, under the signature of the Prime Minister, an instrument, in correspondent form, locating some other locable, or an order, suspending the effect of such initiative location, has, in the mean time, in the office of that same Minister, been received.

Enactive and Ratiocinative.

ART. 32. In case of any such substitution, reasons for the rejection, and the consequent location, will be expected: if none are given, the conclusion of the Public Opinion Tribunal, and of the Legislature, will be—that none can be found.

* On this occasion, the *rationale* will have to speak of this sort of expeditive arrangement, as generally applicable for remedy to the practice of indeterminate and indefinite *suspension*, through negligence or indecision:—a practice pregnant with distress to all individuals interested, as well as indefinite public mischief. Apply it also to appeals. See Ch. xxiii. APPELLATE JUDICATORS. Refer to Morning Chronicle, 27th May, 1824, mentioning Secretary Canning's indefinite suspension of an ordinance of the East India Direction, in the debate of the 26th.

Enactive.

ART. 33. *Deputes permanent.*—Without special reason, no person, who has not been upon the *general locable list*, as per Art. 18, is capable of being located as *depute permanent*, in any office belonging to this department.

Enactive.

ART. 34. Special reason is—where, in the *location instrument* by which the depute is constituted such, the names of all persons on that list being byrecital or reference designated, — the locator states, on the part of each, either *refusal* or *inaptitude* actual or virtual, absolute or comparative: adding, in what particular shape or shapes such inaptitude has place.

Enactive.

ART. 35. In the *location instrument*, matter will in this case be inserted under the four first of the heads enumerated as per Art. 9, in the case of a person located in the situation of *principal* in the office.

Enactive.

ART. 36. Of the deputation instrument, *exemplars* will in this case be disposed of, in number and destination the same as in the case of the *principal*, as per Art. 10.

CONCLUDING INSTRUCTION TO THE PUBLIC OPINION TRIBUNAL.

Instructional.

ART. 1. To the Public Opinion Tribunal it will belong, with all its energies, to urge the commencement, and urge on the progress, of, the

system of appropriate instruction here delineated. By the most powerful particular and sinister interests,—the several Ministers, with their several dependents and other connexions, whoever they are, will at all times be urged to do their utmost for the retardation, and, if possible, the frustration of it. Of this repugnance the cause is no less manifest than the existence is unpreventable. Till the tests of aptitude thus furnished are in operation, the locating functionaries will, of necessity, remain in possession of a power of choice, altogether arbitrary: apt, or in ever so high a degree unapt, their several dependents and connexions will remain located and locable, in all situations under them respectively, from the least to the most highly desirable. On the other hand, no sooner are these tests of aptitude in operation, than, by the influx of tried minds, whose aptitude has been made manifest to all eyes, the sceptre of arbitrary power will be swept out of their hands, and the feelings of a dethroned despot will be theirs.

Instructional.

ART. 2. The whole artillery of *fallacies* will be drawn out and employed; in particular, the better the plan is in *theory*, the more incapable it will be pronounced of being carried into effect in *practice*: and to the thus predicted impracticability, all imaginable exertions will be employed to give fulfilment.

Instructional.

ART. 3. If, and in proportion as, in the dominion of the State, apt instructors, whose native language is the national language, are wanting,—either the functionaries must remain uninstructed and unapt,

or, under the disadvantage of having to learn, at a more or less advanced period of life, a foreign tongue, foreigners must be called in and employed. But, unless in case of temporary calamity, men will not for nothing quit their old accustomed habits and connexions, for those of a strange land : and thus, under the double mask of patriotism and frugality, sinister interest will seek, and with but too much probability of success, a cover for mischievous and anti-patriotic exertions.

Instructional.

ART. 4. Unhappily, no sooner has the system come into operation, than a dilemma, in no small degree unwelcome to every feeling eye, will have taken place : either, to an incalculable amount, sacrifice of the public good—of the good of every branch of the service—must have place ; or, notwithstanding any, the most perfect, degree of moral aptitude, a more or less considerable number of functionaries will have to quit their several situations.

Instructional.

ART. 5. For minimizing the evil from these two opposite sources, one means, however, there is, the application of which will be completely in the power of those functionaries whose situation exposes them to it. According to their several situations, let those in possession participate in the instruction administered to their successors in expectancy : at this price they will add those titles, whatever they be, in which others are sharers with them, to that experience which is peculiar to themselves.

Should pride be troublesome, let this fact quiet it. Anno 1824, in London, John Mac Culloch, having acquired the reputation of proficiency in the

art and science of political economy, instituted a course of lectures. Among his audience were Frederick John Robinson and William Huskisson, both Members of Parliament, both Cabinet Ministers : Robinson, under the name of Chancellor of the Exchequer, principal Official Minister of Finance ; Huskisson, under the title of President of the Board of Trade, executing other functions in the Sub-department of Finance.

§ 18. *DISLOCABLE HOW.*

Enactive.

ART. 1. Every Minister is at any time dislocatable by the Prime Minister.

Enactive.

ART. 2. So by the Legislature.

Enactive.

ART. 3. Other efficient causes of dislocatedness are the same as in the case of a member of the Legislature, as per Ch. vi. § 1. Art. 1. For other checks, see § 31. *Securities for appropriate Aptitude.*

THE END.





